

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Policies and Rules)
Governing Interstate Pay-Per-Call)
and Other Information Services Pursuant to)
the Telecommunications Act of 1996)
)
In the Matter of)
)
Policies and Rules Implementing)
the Telephone Disclosure and Dispute)
Resolution Act)

CC Docket No. 96-146

DOCKET FILE COPY ORIGINAL

CC Docket No. 93-22

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MOTION TO ACCEPT LATE-FILED COMMENTS

August 28, 1996

Enclosed is a duplicate of what was sent by Federal Express for filing on August 24, 1996, which should have been delivered on August 26 as a timely filing. However, Federal Express did not follow my delivery instructions, and as of today I have been unable to locate my submission within the FCC. Consequently I am sending in this duplicate copy.

Respectfully submitted by:

Andrew Egendorf

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August 28, 1996

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August 24, 1996

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Office of the Secretary
Federal Communications Commission
Washington, D.C. 20554

Gentlemen:

Enclosed for filing are an original and nine copies of my
Comments relating to FCC 96-289, "ORDER AND NOTICE OF PROPOSED
RULE MAKING", released July 11, 1996.

Sincerely,

A handwritten signature in cursive script that reads "Andrew Egendorf". The signature is fluid and extends to the right with a long horizontal stroke.

Andrew Egendorf

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COMMENTS OF ANDREW EGENDORF

August 24, 1996

I. INTRODUCTION

I am a Patentee, and Applicant for, United States and foreign patents, all dealing with electronic commerce over the telephone network, the cable television (CATV) network, and the Internet.

Transactions of the type wherein a telephone company or a CATV company acts as an Internet Service Provider (ISP), and does the billing and collection for low-valued transactions between their customers and third-parties (who may or may not otherwise be their customers), will probably become the dominant commercial transactions on the Internet. Transactions wherein CATV companies do billing and collection for such transactions over their networks also will become important channels of commerce.

I suggest that the Rules in their present form (and also as proposed), apparently aimed at specific behavior occurring only over the telephone network, will severely, negatively impact electronic commerce, particularly electronic commerce over the Internet and CATV networks, which consequences do not seem to be consonant with the goal expressed in the Joint Explanatory Statement, H.R. Rep. No. 104-458, 1/1/96, at 113 -- "to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans".

I further suggest that both the "RULES AMENDED" and the "RULES PROPOSED", in their current forms, will be only partially effective in preventing the behaviors which, according to the Discussion Section of the subject Docket (the "Discussion") they are intended to control.

Although comments are solicited only with respect to the RULES PROPOSED, the nature of most of my comments are such that they necessarily concern both the RULES AMENDED and the Rules as they would be further amended if the RULES PROPOSED were adopted. Consequently, when I refer below to the "Rules", I am referring to both the rules as they exist with the AMENDED RULES, and to the rules as they would be further amended by the PROPOSED RULES, if adopted. Individual rules will be referenced by CFR Section number.

My comments will be divided into the following topics:

- I. Introduction
- II. A. Why the Rules Will Be Only Partially Effective
 - B. Comments Specific to the PROPOSED RULES
- III. Effect Of the Rules On Electronic Commerce
 - A. Types of Transactions Affected
 - 1. Product Sales
 - (e.g., Internet purchase of a distant city's local newspaper)
 - 2. Services Sales
 - (e.g., Internet Telephony)
 - B. General Comments Concerning Internet and CATV Commerce
- IV. Proposed General Solution To The Pay-Per-Call/Electronic Commerce Issue

II. A. WHY THE RULES WILL BE ONLY PARTIALLY EFFECTIVE

One of the principal reasons for the existence of differences of opinion as to the meaning of the Rules (i.e., what the Commission refers to as "loopholes") is that different words are used to define or describe what (presumably) is intended to be the same thing. Such differences of opinion come about because, quite reasonably, the use of different words by the Commission implies that different things are intended by the Commission. The Rules have several instances of this, each one of which leaves open an opportunity to operate in a manner which may be contrary to the intent of the Commission.

Inconsistencies are most prevalent concerning the use of the following words: "information", "service", "information service", "audio information service", "data information service", "information provider", "service provider", "product", "goods", and "call".

It appears that in an attempt to specifically include certain situations, words have been used in a less than precise manner with the result that there can be several interpretations of the supposed meaning. Such ambiguities could be eliminated by starting with a rigorous set of definitions and thereafter using the same words when the same meaning is intended.

Now that there is a detailed definition of "information services" in the statute, it would seem the best structure for the Rules would be to define "pay-per-call" with reference to "information services" and write the remainder of the Rules around those two definitions. Then, individual exceptions to the burdens imposed by the Rules could be made to allow less-regulated electronic commerce in those areas in which the Commission deemed appropriate.

The following are examples of the use of inconsistent language where (presumably) no distinction was intended, discussion of the ambiguity and resulting "loophole", and, as requested, proposed specific Rule language.

Although the following comments reference the Rules as they appear in Appendix A (RULES AMENDED), the application of these comments to the Rules as they would be further amended by Appendix B (RULES PROPOSED), if adopted, is obvious.

1. Section 64.1501. This Section defines pay-per-call.

There does not seem to be any discussion or explanation as to why the three (presumably mutually-exclusive) categories designated as (a)(1)(i), (ii), and (iii), but not all other information services (e.g., pictures), were selected as falling under the definition of "pay-per-call" when the Discussion indicates that the problems sought to be corrected concern unexpected charging for all "information services".

a. **(a)(1)(i) -- "Audio information or audio entertainment ...;"**

"audio information" and "audio entertainment" are not defined terms. "Video" (e.g., still or motion pictures) with accompanying audio arguably is included in the meaning of one or both of these terms, but video without any audio clearly would not be included.

Suggested substitute language --

"Information services ...;"

b. **(a)(1)(ii) -- "Access to simultaneous voice conversation services; or"**

It would seem from the Discussion that there are two basic forms of "simultaneous voice conversation services": (x) those which include among the conversationalists a party paid to converse; and, (y) those which do not. (Presumably) "audio entertainment" includes the former, and "simultaneous voice conversation" includes the latter. The definition of "information services", however, includes the former, but not necessarily the latter. Therefore, if the proposed language at "a." is adopted, and the Commission's meaning is that both forms of "simultaneous voice conversation services" be included in the definition of "information services", in order to maintain the mutual exclusivity, and therefore the clarity and precision, of each of the categories listed under (a)(1), category (a)(1)(ii) should be eliminated entirely. If, on the other hand, the Commission's intent is to include within the definition of "information service", the former form of "simultaneous voice conversation", but exclude the latter form, then (a)(ii) should be clarified.

Suggested substitute language --

"Access to simultaneous voice conversation services other than information services; or"

- c. (a)(1)(iii) -- **"Any service, including the provision of a product, ...;"**.

This is unclear as to whether what is intended to be included in the definition of pay-per-call is: (x) only those services which include the providing of a product; or, (y) anything purported to be a service or a product. Because, if the suggested substitute language at "a." is adopted, all information services will be included in (a)(1)(i), in order to maintain the mutual exclusivity, and therefore the clarity and precision, of each of the categories (a)(1)(i), (a)(1)(ii), and (a)(1)(iii), information services should be excluded from (iii).

Suggested substitute language --

"Any service or product, other than an information service, ...;".

2. Section 64.1504. This Section deals with charging on toll-free numbers.

- d. **[Introduction] -- "A common carrier ... the use of any 800 telephone number, or other telephone number ...:"**

The general structure of Section 64.1504 recognizes that there are three categories of things for which attempts at charging could be made: the call itself; information conveyed during the call; services performed during the call.

Subparagraph (a) imposes an absolute bar on charges for the call itself, thereby rendering toll-free 800 and other telephone numbers advertised or widely understood to be toll-free. The issue that is destined to emerge here originates with the vagueness of the phrase "advertised or widely understood to be toll-free". At a minimum, 888 should be listed. Far more importantly, clarification should be made as to whether free local calls, calls to the "555" exchange within all geographical area, and service access, codes, calls to the 500, 600, and 700 service access codes, and free calls to the 900 service access code are intended to be included or excluded under Section 64.1504. It would seem from the Discussion that blocking is an adequate remedy for all of the otherwise not illegal behaviors sought to be controlled. But the 500, 600, and 700 service access codes are not presently blockable. The 555 exchange has been introduced by NYNEX for its areas, and perhaps by other LECs, as similar to 900, and therefore it could not reasonably be widely understood to be toll-free.

Suggested substitute language --

"A common carrier ... the use of any 500, 600, 700, 800, or 888 telephone number, or other telephone number ...:"

In addition, add an exception as 64.1504(f)(3) for 900 and 555 --

"(3) numbers in the 900 service access code, and numbers in any 555 exchange, shall not be considered numbers advertised or widely understood to be toll-free."

- e. (b) -- **"The calling party being connected to a pay-per-call service;"**.

The definition of pay-per-call requires that the service be accessed through use of a 900 number. It is therefore problematic whether it is possible to connect from an 800 number to a pay-per-call service.

Suggested substitute language --

"The calling party being connected to a service which would be a pay-per-call service were it accessed through use of the 900 service access code;"

[Section 64.1506 has the same logical flaw; perhaps it should be reworded as follows -- "Any interstate service which would be a pay-per-call service if accessed through the 900 service access code shall be offered only through telephone numbers beginning with the 900 service access code.".]

f. (c) -- **"The calling party being charged for information ... unless"**

Subparagraph (c) covers charges for "information", but does not cover charges for "services" or charges for "information services" of a type which are not "information".

Suggested substitute language --

"The calling party being charged for information or services ... unless"

g. (c)(2)(i) -- **"Clearly states that there is a charge for the call;"**

There can be no charge for the call pursuant to (a). "information or services" was probably intended for "call".

Suggested substitute language --

"Clearly states that there is a charge for the information or services;"

h. (c)(2)(ii) -- **"Clearly states the service's ... for the service ...;"**

"information or services" probably was intended for "service" in these two places.

Suggested substitute language --

"Clearly states the information's or service's ... for the information or service ...;"

i. (c)(2)(v) -- **"... charges for the call begin ..."**

There can be no charges for the call pursuant to (a). "information or services" probably was intended for "call".

Suggested substitute language --

"... the charges begin ..."

j. (d) -- **"... for the provision of audio or data information services, simultaneous voice conversation services, or products; and"**

There does not seem to be any explanation of why the wording of this Section is different from the wording in the pay-per-call definition. In fact, the Discussion leads one to believe that what is desired by Congress is to prohibit the avoidance of blocked 900 access to a pay-per-call transaction by a calling party using a collect-callback dialing pattern.

Suggested substitute language: --

"... for the provision of a service which would be a pay-per-call service were it accessed through use of the 900 service access code; and"

k. (e) -- "... transfer to a pay-per-call service,".

See discussion at "e".

Suggested substitute language: --

"... transfer to a service which would be a pay-per-call service were it accessed though use of the 900 service access code,".

l. (f)(1)(iii) -- "Any purchase of goods or of services that are not information services."

By definition, "goods" (which must be tangible under the UCC) cannot be "information services" (which must be delivered via telecommunications). To conform to the use in Section 64.1501(a)(1)(iii), "product" should be used.

Suggested substitute language: --

"Any purchase of a service, or of a product, that is not an information service."

II. B. COMMENTS SPECIFIC TO THE PROPOSED RULES

m. With respect to proposed Section 64.1501(b), it should be clarified whether: (1) and (2) apply only to numbers that are not "toll-free", and (3) applies only to numbers that are toll-free; OR, (1) and (2) apply to all numbers, and (3) applies additionally to numbers that are "toll-free".

If the latter, then the conflicting provisions between [(1) and (2)] and [(3)] need to be resolved.

If the former, then it should be made clear whether or not it is intended that the reference in proposed (3) to the "requirements of Section 64.1504(c)" means: the requirements of what appears in "(c)", i.e., the substance of (c)(1) and (c)(2); OR, means the requirements of what appears in "(c)" with the *proviso* of (f).

In either case, adoption of (b) will not cause the desired effect (as stated in Docket paragraph 42) of creating a uniform requirement for written presubscription; "toll-free" and "not toll-free" will have different requirements.

n. In Docket paragraph 43, it is stated that one purpose of proposed Section 64.1501(b)(2) is to eliminate the ability of an Information Provider to instantly grant a credit card, and a common carrier to instantly grant a calling card, during the course of a call. The structure of the Rules, however, is such that proposed Section 64.1501(b)(2) will have effect only with respect to information services obtained by means of other than a toll-free number. This follows from the fact that proposed Section 64.1501(b)(3) contains the same exception for "information services provided by means of a toll-free number" as does Section 64.1501(b)(6) as presented in the RULES AMENDED. Both these exceptions require conformance with the requirements of Section 64.1504(c).

Section 64.1504(c)(2), however, allows charging to a credit card or a calling card, and cards which meet the requirements of (c)(2) may be instantly, orally, granted, as acknowledged in Docket paragraphs 37 and 43. Thus, the dialing pattern of calling once (over any dialing pattern) and obtaining an instant credit card or calling card usable for "information services provided by means of a toll-free number", then calling again to obtain "information services provided by means of a toll-free number" and billing it to the credit card or calling card will remain untouched by the Rules. The PROPOSED RULES do add the risk for the vendor that the credit card or calling card was improperly issued (because the party who called to have it issued was unauthorized by the party to be billed for it), with the result that the charges will ultimately be uncollectable, but the Rules will not stop the aggravation for all parties involved caused by introducing this uncertainty into the granting of cards.

It is suggested that a better solution would be for the Commission to specifically allow "instant" granting of credit cards and calling cards for use only in obtaining "information services provided by means of a toll-free number", under a safe-harbor that such cards are issued only over the 900 access service code, which carries with it the already-in-place protection of being blockable and of being unblockable only by the subscriber to the originating line.

III. EFFECT OF RULES ON ELECTRONIC COMMERCE

A. TYPES OF TRANSACTIONS AFFECTED.

The electronic commerce I wish to address concerns transactions over the Internet where a consumer, during a call to "a telephone number widely understood to be toll-free", purchases and has delivered to him during the call, products or services, and is charged for the products or services by means of "a credit, prepaid, debit, charge, or calling card".

Section 64.1504(c) applies to these transactions.

The exception in 64.1504(f)(1)(iii), which would eliminate the need for both the (c)(1) written agreement and the (c)(2) introductory message, does not apply, because the products or services are "information services" by definition -- (i) the products, because the vendor has a direct financial interest in them and the information they contain is delivered via telecommunications; and, (ii) the services, because, necessarily, any service capable of being performed via telecommunications either offers a capability for making available information via telecommunications, or itself involves the transmission of information via telecommunications.

Following is a discussion of two specific examples of electronic commerce over the Internet which will become unnecessarily unwieldy -- if not impossible -- under the Rules in their current form (or in the form they would have even if the clarifying suggested substitute language above were adopted), and thereafter some discussion of ways to relieve what appears to be an unnecessary burden for such transactions.

1. PRODUCT SALES

(E.G., INTERNET PURCHASE OF A DISTANT CITY'S LOCAL NEWSPAPER)

The scenario: A customer connects to the Internet through the services of an Internet Service Provider (ISP) by calling "a telephone number widely understood to be toll-free" (e.g., a local or 800 number). The ISP may be an independent ISP, part of a larger company offering other on-line services (e.g., America Online), or the local telephone company itself.

Once connected to the Internet, the customer "browses" around indefinitely -- for free -- until finding something worthy of purchase, in this example a copy of a distant city's local newspaper for 15 cents. The vendor of the newspaper delivers the paper to the customer over the Internet, and bills it, for example, to the customer's telephone bill, pursuant to billing and collection agreements previously made between the vendor and the vendor's local telephone company (which already has billing and collection agreements in place with all other telephone companies, including the customer's).

The hypothesized transaction must comply with either (c)(1) or (c)(2).

Compliance with (c)(1) renders the transaction impractical; (c)(1) is intended for repeat transactions between the same customer and same vendor, not for the occasional transaction between parties who previously have not dealt with each other.

Compliance with (c)(2) is unworkable. It would require that every vendor present an introductory message which, among other things, would (1) ask for the caller's card number -- before the caller even looked around and decided to buy anything -- and (2) state that charges for the "call" [i.e., the information services] begin at the end of the introductory message -- which is not the intended transaction. In the desired transaction the charges do not begin until some positive action is taken on the part of the customer.

Arranging to do the transaction over the 900 service access code is not practical because the low value of the transaction makes it uneconomical to pay the rates established by the long distance carriers for 900 service.

And from the customer's side, it would be extremely annoying to see a constant barrage of warnings when merely browsing around.

It also should be pointed out that customers who use a Cable Television (CATV) company as their ISP can have the paper delivered and billed to their CATV account without any of the burden of the Rules.

2. SERVICES SALES

(E.G., INTERNET TELEPHONY)

The scenario: A customer connects to the Internet as above. The customer places an Internet telephone call to a receiving party as follows -- the customer's ISP connects over the Internet to an ISP located in the area served by the local telephone company which services the receiving party. The distant ISP calls the receiving party on the local telephone network, and connects the customer to the calling party. The remote ISP charges the calling customer something for this service in addition to the local transmission costs incurred by the remote ISP in making the call. These charges are billed by the remote ISP through billing and collection agreements previously made between the remote ISP and the remote ISP's local telephone company (which already has billing and collection agreements in place with all other telephone companies, including the customer's).

It appears that the foregoing transaction is prohibited by Section 64.1506, because it consists of a service described in "64.1501(a)(1) through (a)(2)", and therefore may be offered only through the 900 service access code.

Again, arranging to do the transaction over the 900 service access code is not practical because of the same reason as for the product example above.

Again it should be pointed out that customers who use a CATV company as their ISP can make such calls and have them billed to their CATV accounts without any of the burden of the Rules.

B. GENERAL COMMENTS CONCERNING INTERNET AND CATV COMMERCE

o. Regulation of commerce over the Internet and over CATV systems is not specifically discussed in the subject Docket. If the harms to be remedied are believed to occur only over conventional telephone calls with conventional telephone instruments, then it is suggested that this be recognized by the addition of specific exceptions to the Rules in Section 64.1504(f) to exclude Internet commerce and calls made over the telephone network by telecommunications devices involving video data and video screens.

Suggested language to be added as Sections 64.1504(f)(4) and (5) [or (3) and (4) if the suggested language at "d." is not adopted] --

"(4) The requirements of paragraph (c) shall not apply to transactions wherein the information services are transmitted from the provider of such services over the Internet to the calling party.

(5) The requirements of paragraph (c) shall not apply to transactions which involve the transmission of video data from the calling party to the information services provider, or from the information services provider to the calling party, whether or not audio data is transmitted along with the video data."

p. With respect to the message requirement discussed above under "Product Sales", it is suggested that the message required by 64.1504(c)(2) not be an "introductory one", but rather be one made immediately prior to the customer's taking of the action that indicates a desire to purchase the information services, and that (c)(2)(v) and (vi) be conformed to various possible forms of transactions, in particular those in which after a purchase of information services the customer remains connected over the free call to continue browsing and perhaps purchase additional information services.

q. With respect to the use of a bypass, it is suggested that at least one specific safe-harbor be provided. Without this, there undoubtedly will be legitimate differences of opinion as to what is a proper bypass mechanism. One possibility would be that a two-symbol code (e.g., "11") could be inputted at any time during the message to bypass it. Callers would be told the code only at the end of the message, so each caller will hear it at least once.

r. With respect to the 64.1504(c)(1) reference to, "(including an agreement transmitted through electronic medium)", it is suggested that an obvious source of disagreement, particularly in light of Docket paragraph 42, will be that it is not clear whether this means: (x) a copy of the written agreement, already legally executed by both parties, may be transmitted through electronic medium to the calling party (e.g., a copy sent to the calling party by fax or by data transmission); or, (y) the agreement may be executed by the calling party by electronic means (e.g., faxing or otherwise sending by data transmission a copy of a legally binding acceptance such as a signature, or sending by data transmission a verbal acceptance which is recorded on tangible media by the vendor.)

s. It also is suggested that the Commission address the disparity in treatment, depending upon whether or not the electronic medium happens to involve a telephone network or a CATV network, of what would otherwise be identical transactions from the consumer's point of view.

IV. PROPOSED GENERAL SOLUTION TO THE PAY-PER-CALL/ ELECTRONIC COMMERCE ISSUE

Both the Joint Explanatory Statement, H.R. Rep. No. 104-458, 1/1/96, and the Discussion, make it clear that nearly all of the transactions that are intended to be regulated by the present Rule Making concern the need for the subscriber to a telephone line to be able to stop unwanted charges for telephone calls and information services of two types -- those incurred by parties who have legal access to operate the telephone, but whom have not been specifically "authorized" by the subscriber to the line to incur such charges (e.g., children, employees, guests in business establishments) and those incurred by parties who did not understand that their actions would incur charges (e.g., persons under the incorrect impression that no action taken during the course of an 800 call could cause charges to be made on their telephone bill).

Balanced against the foregoing needs are the needs of legitimate information services providers and common carriers to be able to bill and collect for information services legally contracted for and delivered, to have a clear set of Rules to operate under, and not to be unnecessarily burdened with cumbersome regulations when none are needed. Also to be considered is the consumer's need for a simple and convenient way to purchase desired information services.

I suggest that the Rules are not needed for electronic commerce over the Internet, or for electronic commerce over the CATV network when transactions involve video. I further suggest that whatever rules are imposed on electronic commerce via the telephone network be similarly imposed on similar electronic commerce via the CATV network.

As for the telephone system (including CATV telephony), I propose as a general solution to these issues the following:

- (1) Totally prohibit any charging to the telephone bill, except charges placed on the telephone bill through charges to a calling card, stemming from calls made over a specified list of service access codes intended to be toll-free, such as 800 and 888. Prohibit calls to these service access codes from being blocked from any telephone. Make the numbers portable. Prohibit the instant issuance of calling cards.
- (2) Adjust the definition of "pay-per-call" to whatever is appropriate, and require that all pay-per-call transactions be done on the 900 service access code. Make 900 blockable. Make 900 numbers portable. Do not make 900 charges deniable.
- (3) Create a new service access code -- I propose 777 -- and:
 - (i) make it blockable, with all customers initially blocked;
 - (ii) prohibit any charge to the customer for transmission of the call itself;
 - (iii) require long distance companies to charge information services providers the same for transmission of these calls as for toll-free calls such as 800 and 888;
 - (iv) allow charges to the telephone bill to be made for the delivery of information services from time to time during the call if specified customer action is taken. The customer action necessary to purchase information services should be as simple as possible. Examples would be inputting an approval via a computer keyboard and "touch toning" or "dialing" an approval via a telephone;
 - (v) allow billing on the basis of ANI;
 - (vi) make the numbers portable;
 - (vii) allow the instant issuance of line-based calling cards to the ANI from which the call originates;
 - (viii) make the charges deniable;
 - (ix) specify that this service access code is not to be considered "toll-free".

Respectfully submitted by:

A handwritten signature in cursive script, reading "Andrew Egendorf". The signature is fluid and extends to the right with a long horizontal stroke.

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August 24, 1996